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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re A. Schulman, Inc.

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Serial No. 76/137,363

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G. Patrick Sage of The Firm of Hueschen and Sage for A. Schulman, Inc.

Brian D. Brown, Trademark Examining Attorney, Law Office 105 (Thomas G. Howell, Managing Attorney).

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Before Cissel, Seeherman and Quinn, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

A. Schulman, Inc. has appealed from the final refusal of the Trademark Examining Attorney to register INVISION as a trademark for "dry solid plastic materials in bulk powder, pellet, granule and bead form for use in further processing by the plastics manufacturing industry."[1]

[1] Application Serial No. 76/137,363, filed September 28, 2000. The application was initially filed based on an asserted bona

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark so resembles the mark ENVISION, previously registered[2] for "plastic foam laminates for use in vibration dampening, as surface protection and as cushioning material in shipping and packaging," that, as used on applicant's identified goods, it is likely to cause confusion or to cause mistake or to deceive.

Applicant and the Examining Attorney have filed appeal briefs.[3] Applicant did not file a reply brief, nor did it request an oral hearing.

We reverse.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in **In re E. I. du Pont de Nemours & Co.**, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between

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fide intention to use the mark in commerce. Applicant subsequently submitted an amendment to allege use, claiming first use dates of March 6, 2001. This amendment was accepted by the Examining Attorney on January 22, 2002.

[2] Registration No. 2,402,918, issued November 7, 2000.

[3] Applicant is advised that only a single copy of an appeal brief should be filed.

the goods. **Federated Foods, Inc. v. Fort Howard Paper Co.**, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, the Examining Attorney asserts that they are related because they are both for plastic goods and materials. The Examining Attorney has pointed out that applicant's specimen brochure/sales kit is directed to the automobile industry, and states that INVISION polyolefin thermoplastics "are recommended for soft PVC replacement in injection molded automotive interior applications." Some of the specific applications which are listed are "arm rests and assist handles."

The Examining Attorney has also made of record a third-party registration[4] with the following identification of goods:

> Vibration dampening and thermoplastic elastomer in the form of a pellet, that is a tri-block copolymer having the polystyrene phase and vinyl bonded polyisoprene phase, being able to mold into various forms for use in manufacture of sporting goods, internal trim parts of automobile [sic], inside walls of vehicle, packings, gaskets, all kind [sic] of parts of electrical appliances for household purposes, household utensils, building materials, and flooring.

[4] Registration No. 1,943,188.

It is the Examining Attorney's position that because the above listed goods, i.e., elastomers in the form of pellets, have a vibration dampening purpose and are used in automobiles; because the cited registration is for a plastic foam laminate that has a vibration dampening purpose; and because applicant's plastic materials are used in automobiles, this shows that the goods are related.

We cannot conclude on the basis of the foregoing evidence and argument that the Office has met its burden of demonstrating that applicant's goods and those in the cited registration are related for putposes of likelihood of confusion. Although both types of goods are made of plastic, the fact that a single term can be used to generally describe the goods is not a sufficient basis to find that they are related. **Harvey Hubbell Incorporated v. Tokyo Seimitsu Co., Ltd.**, 188 USPQ 517 (TTAB 1975) (the mere fact that the term "electronic" can be used to describe any product that includes an electronic device does not make a television set similar to an electronic microscope, or an electronic automotive ignition system similar to telemetering devices). See also, **General Electric Company v. Graham Magnetics Incorporated**, 197 USPQ 690 (TTAB 1977).

Nor does the identification in the third-party registration show that applicant's goods and those in the cited registration are related. Although the goods in the third-party registration are a thermoplastic polymer pellet, and therefore appear to be similar to applicant's identified goods, and have the purpose of dampening vibrations, which is the same purpose as the goods in the cited registration, there are also clear differences between the goods in the cited registration and both applicant's goods and those in the third-party registration. Specifically, the cited registration is for "plastic foam laminates," while applicant's goods (and those in the third-party registration) are not. As applicant points out, plastic foam laminates are finished products, while applicant's goods, as its identification clearly states, are designed for "further processing by the plastics manufacturing industry." The Examining Attorney has not provided any evidence that both applicant's identified goods and those identified in the cited registration would be used in the automobile manufacturing industry, or in any other industry.

It must also be remembered that applicant's identification restricts its goods to the plastics manufacturing industry. The purchasers for such goods are

sophisticated and knowledgeable, and would exercise care in making bulk purchases. They are not likely to assume that goods emanate from the same source, even if sold under similar marks, simply because the goods are made of plastic and could be used to dampen vibrations. See **Electronic Design & Sales Inc. v. Electronic Data Systems Corp.**, 21 USPQ2d 1388 (Fed. Cir. 1992).

Thus, even though there are clear similarities between the marks, on this record we cannot find that the goods are sufficiently related such that the Office has established that confusion is likely.[5]

Decision: The refusal of registration is reversed.

[5] We note that applicant asserted in its response to the first Office action that "there are many (153) marks for 'ENVISION' in many classes. There also are at least fifteen (15) registered or pending marks for 'INVISION', and at least fourteen (14) additional marks that contain the mark 'INVISION'." Copies of third-party registrations and/or applications taken from the USPTO database must be submitted in order to make such registrations and applications of record. Applicant did not do so in this case, but the Examining Attorney never objected, nor did he advise applicant that the mere statement was insufficient to make the registrations/applications of record. On the contrary, the Examining Attorney discussed applicant's argument regarding the existence of these marks. Accordingly, we have considered applicant's statement, although it is of little probative value because applicant has provided no information as to the goods or services for which the ENVISION/INVISION marks have been registered. As a result, we cannot conclude that the cited ENVISION mark is weak, or entitled to a limited scope of protection.